

Department of the Army, DoD

§ 589.4

of DoD members, employees, and family members outside the United States with court orders.” This guidance applies to all soldiers and Department of the Army and Nonappropriated Fund (NAF) civilian employees serving outside the United States, as well as to their command sponsored family members.

(b) DODD 5525.9 requires DoD cooperation with courts and federal, state, and local officials in enforcing court orders pertaining to military personnel and DoD employees serving outside the United States, as well as their command sponsored family members, who—

(1) Have been charged with or convicted of any felony.

(2) Have been held in contempt of a court for failure to obey a court order, or

(3) Have been ordered to show cause why they should not be held in contempt for failing to obey a court order.

This guidance does not affect the authority of Army officials to cooperate with courts and federal, state, or local officials, such as is currently described in Army Regulation 27-3, Legal Services, Army Regulation 190-9, Military Absentee and Deserter Apprehension Program, and Army Regulation 608-99, Family Support, Child Custody, and Paternity, in enforcing orders against soldiers and employees in matters not discussed below. The guidance below does not authorize Army personnel to serve or attempt to serve process from U.S. courts on military or DoD employees overseas. (See also AR 27-40, Litigation, paragraph 1-7.)

§ 589.3 Applicability.

This section applies to the following personnel:

(a) Army personnel on active duty or inactive duty for training in overseas areas. This includes the National Guard when federalized.

(b) Department of the Army civilian employees, including Nonappropriated Fund Instrumentalities (NAFI) employees.

(c) Command sponsored family members of Army personnel or Department of the Army civilian employees.

§ 589.4 General.

(a) Courts of federal, state, or local officials desiring to initiate a request for assistance pursuant to this section must forward the request, with appropriate court orders, as follows:

(1) For soldiers and members of their family, to the soldier’s unit commander of Office, Deputy Chief of Staff for Personnel (ODCSPER), ATTN: DAPE-MP (703-695-2497); and

(2) For Department of the Army civilian employees and members of their family, to the servicing civilian personnel office for the employee’s command, or ODCSPER, ATTN: DAPE-CPL, (703-697-4429).

(3) Nonappropriated Fund (NAF) employees and members of their family, to the servicing civilian personnel office for the employee’s command, or ODCSPER, ATTN: CFSC-HR-P (703-325-9461).

(b) Upon receipt of such requests for assistance concerning courts orders described in paragraph (a) of this section and AR 190-9, commanders/supervisors, with the advice of their servicing Judge Advocates and legal advisors, will take action as appropriate as outlined below:

(1) Determine whether the request is based on an order issued by a court of competent jurisdiction. An “order issued by a court of competent jurisdiction” is an order that appears valid on its face and is signed by a judge.

(2) If the order appears valid on its face and is signed by a judge, attempt to resolve the matter in a timely manner to the satisfaction of the court without the return of, or other action affecting, the soldier, Army civilian employee, or family member. Due regard should be given to mission requirements, applicable international agreements, and ongoing DoD investigations or courts-martial.

(3) If the matter cannot be resolved, afford the subject of the court order a reasonable opportunity to provide evidence of legal efforts to resist the court order or otherwise show legitimate cause for noncompliance. If it is determined that efforts to provide such evidence or to show cause for noncompliance warrant a delay in taking further action, a request for delay, not to exceed 90 days, must be sought from the

§ 589.4

32 CFR Ch. V (7–1–16 Edition)

Secretary of the Army. Such requests, fully setting forth the reasons justifying delay and the estimated delay necessary, will be forwarded within 30 days directly to ODCSPER, ATTN: DAPE-MP (for military personnel and their family members or ODCSPER, ATTN: DAPE-CPL (for Army civilian employees and their family members) or ODCSPER, ATTN: CFSC-HR-P (for NAF employees and their family members). These offices must promptly forward the request for delay to the Assistant Secretary of Army (Manpower and Reserve Affairs) ASA(M&RA), for approval. If a delay is approved, ASA(M&RA) will promptly notify the Assistant Secretary of Defense (Force Management and Personnel) ASD(FM&P), copy furnished General Counsel, Department of Defense (GC, DOD).

(4) If one, the matter cannot be resolved, and two, it appears that non-compliance with the request to return the soldier, or to take other action involving a family member or DA or NAF employee is warranted by all the facts and circumstances of the particular case, and three, the court order does not pertain to any felony or to a contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of the court or the custody of a parent or another person awarded custody by court order, the matter will be forwarded, for soldiers or their family members to the soldier's general court-martial convening authority or, for army civilian or NAF employees or their family members, to the fairest general officer or civilian equivalent in the employee's chain of command, for a determination as to whether the request should be complied with. In those cases in which it is determined that noncompliance with the request is warranted, copies of that determination will be forwarded directly to the appropriate office noted in § 589.4(b)(3) and to HQDA, DAJA-CL, pursuant to chapter 6, AR 190–9.

(5) If one, the matter cannot be resolved, and two, it appears that non-compliance with the request to return the soldier, or to take other action involving a family member of DA or NAF employee, is warranted by all the facts and circumstances of the particular case, and three, the court order per-

tains to any felony or to a contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of a court or the custody of a parent or another person awarded custody by court order, a request for exception to policy will be forwarded directly to the appropriate office listed in § 589.3(b)(3) with an information copy to HQDA, DAJA-AL, within 30 days unless a delay has been approved by ASA(M&RA). The offices listed in § 589.3(b)(3) must forward the request for an exception promptly through ASA(M&RA) to ASD(FM&P) for decision, copy furnished to General Counsel, DOD.

(6) All actions, whether to invoke the DOD Directive or not, must be reported promptly to ASD(FM&P) and General Counsel, Department of Defense. See also DOD Directive 5525.9, paragraph E.3.c.

(c) If requests for military personnel cannot be resolved without return of the individual, and denial of the request as outlined in this section is not warranted, the individual will be ordered pursuant to section 721, Public Law 100–456 and DODD 5525.9 to the appropriate U.S. port of entry at government expense, provided the federal, state, or local authority requesting the individual provides travel expenses including a prepaid transportation ticket or equivalent and an escort, if appropriate, from the port of entry to the appropriate jurisdiction. Absent unusual circumstances, requesting parties will be notified at least 10 days before the individual is due to return. Guidance concerning use of military law enforcement personnel to effect the return of military personnel to U.S. civil authorities may be obtained from the U.S. Army Military Policy Operations Agency (MOMP-O).

(d) In accordance with DoD policy, military personnel traveling pursuant to a contempt order or show cause order, as described in this part and in AR 614–XX is entitled to full transportation and per diem allowances. However, this does not alleviate the requesting parties' requirement to pay travel expenses from the appropriate U.S. port of entry. Any travel expenses received from the requesting party

Department of the Army, DoD

§ 589.4

must be deducted from the soldier's entitlement to travel and per diem allowances. The soldier will be returned in a temporary duty (TDY) status, unless a permanent change of station (PCS) is appropriate.

(e) If requests for Army civilian and NAF employees cannot be resolved and denial of the request as outlined in this section is not warranted, the individual will be strongly encouraged to comply with the court order. Failure to comply with such orders by an Army civilian or NAF employee, if all criteria are met, is a basis for withdrawal of command sponsorship and adverse action against the employee, to include removal from federal service. Proposals to take disciplinary/adverse actions must be coordinated with the appropriate civilian personnel office (CPO) and the servicing Judge Advocate or legal advisor and forwarded for approval to the first general officer or civilian equivalent in the employee's chain of command. A copy of the final action taken on the case must be for-

warded to HQDA, ATTN: DAPE-CPL, or ATTTL: CFSC-HR-P (for NAF employees).

(f) If the request is based upon a valid court order pertaining to a family member of a soldier or Army civilian or NAF employee, the family member will be strongly encouraged to comply with the court order if denial of the request as outlined in this part is not warranted. Unless the family member can show legitimate cause for non-compliance with the order, considering all of the facts and circumstances, failure to comply may be basis for withdrawal of command sponsorship.

(g) Failure of the requesting party to provide travel expenses for military personnel as specified in this section, is grounds to be recommended denial of the request for assistance. The request must still be forwarded through DAPE-MP and ASA(M&RA) to ASD(FM&P) for decision, copy furnished to General Counsel, Department of Defense.

[55 FR 47042, Nov. 8, 1990, as amended at 56 FR 371, Jan. 4, 1991]